

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

Scott Johnson,

Plaintiff,

v.

Maria Amarante, in individual and
representative capacity as trustee of
the Amarante Family Trust dated
December 19, 2014;
**Christina Marie Amarante-
Gonzalez**, in individual and
representative capacity as trustee of
the Amarante Family Trust dated
December 19, 2014;
ABMAC Industries Inc., a
California Corporation; and Does 1-
10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Scott Johnson complains of Maria Amarante, in individual and
representative capacity as trustee of the Amarante Family Trust dated
December 19, 2014; Christina Marie Amarante-Gonzalez, in individual and
representative capacity as trustee of the Amarante Family Trust dated
December 19, 2014; ABMAC Industries Inc., a California Corporation; and
Does 1-10 ("Defendants"), and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. Plaintiff is a level C-5 quadriplegic. He cannot walk and also has significant manual dexterity impairments. He uses a wheelchair for mobility and has a specially equipped van.

2. Defendant Maria Amarante, in individual and representative capacity as trustee of the Amarante Family Trust dated December 19, 2014, owned the real property located at or about 275 Tully Rd., San Jose, California, in January 2019.

3. Defendant Christina Marie Amarante-Gonzalez, in individual and representative capacity as trustee of the Amarante Family Trust dated December 19, 2014, owned the real property located at or about 275 Tully Rd., San Jose, California, in January 2019.

4. Defendant Maria Amarante, in individual and representative capacity as trustee of the Amarante Family Trust dated December 19, 2014, owned the real property located at or about 275 Tully Rd., San Jose, California, in February 2019.

5. Defendant Christina Marie Amarante-Gonzalez, in individual and representative capacity as trustee of the Amarante Family Trust dated December 19, 2014, owned the real property located at or about 275 Tully Rd., San Jose, California, in February 2019.

6. Defendant Maria Amarante, in individual and representative capacity as trustee of the Amarante Family Trust dated December 19, 2014, owned the real property located at or about 275 Tully Rd., San Jose, California, in March 2019.

7. Defendant Christina Marie Amarante-Gonzalez, in individual and representative capacity as trustee of the Amarante Family Trust dated December 19, 2014, owned the real property located at or about 275 Tully

1 Rd., San Jose, California, in March 2019.

2 8. Defendant Maria Amarante, in individual and representative capacity
3 as trustee of the Amarante Family Trust dated December 19, 2014, owns the
4 real property located at or about 275 Tully Rd., San Jose, California, currently.

5 9. Defendant Christina Marie Amarante-Gonzalez, in individual and
6 representative capacity as trustee of the Amarante Family Trust dated
7 December 19, 2014, owns the real property located at or about 275 Tully Rd.,
8 San Jose, California, currently.

9 10. Defendant ABMAC Industries Inc. owned Maaco Collision Repair
10 located at or about 275 Tully Rd., San Jose, California, in January 2019.

11 11. Defendant ABMAC Industries Inc. owned Maaco Collision Repair
12 located at or about 275 Tully Rd., San Jose, California, in February 2019.

13 12. Defendant ABMAC Industries Inc. owned Maaco Collision Repair
14 located at or about 275 Tully Rd., San Jose, California, in March 2019.

15 13. Defendant ABMAC Industries Inc. owns Maaco Collision Repair
16 ("Maaco") located at or about 275 Tully Rd., San Jose, California, currently.

17 14. Plaintiff does not know the true names of Defendants, their business
18 capacities, their ownership connection to the property and business, or their
19 relative responsibilities in causing the access violations herein complained of,
20 and alleges a joint venture and common enterprise by all such Defendants.
21 Plaintiff is informed and believes that each of the Defendants herein,
22 including Does 1 through 10, inclusive, is responsible in some capacity for the
23 events herein alleged, or is a necessary party for obtaining appropriate relief.
24 Plaintiff will seek leave to amend when the true names, capacities,
25 connections, and responsibilities of the Defendants and Does 1 through 10,
26 inclusive, are ascertained.

JURISDICTION & VENUE:

15. The Court has subject matter jurisdiction over the action pursuant to 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

16. Pursuant to supplemental jurisdiction, an attendant and related cause of action, arising from the same nucleus of operative facts and arising out of the same transactions, is also brought under California's Unruh Civil Rights Act, which act expressly incorporates the Americans with Disabilities Act.

17. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is founded on the fact that the real property which is the subject of this action is located in this district and that Plaintiff's cause of action arose in this district.

FACTUAL ALLEGATIONS:

18. Plaintiff went to the Maaco in January 2019 (twice), February 2019 and March 2019 with the intention to avail himself of its services, motivated in part to determine if the defendants comply with the disability access laws.

19. Maaco is a facility open to the public, a place of public accommodation, and a business establishment.

20. Parking spaces are one of the facilities, privileges, and advantages offered by Defendants to patrons of Maaco.

21. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide accessible parking.

22. Currently, the defendants fail to provide accessible parking.

23. Entrance into Maaco is another one of the facilities, privileges, and advantages offered by Defendants to patrons of Maaco.

24. Unfortunately, on the dates of the plaintiff's visits, the defendants failed to provide accessible door hardware.

25. Currently, the defendants fail to provide an accessible entrance.

1 26. Plaintiff personally encountered these barriers.

2 27. By failing to provide accessible facilities, the defendants denied the
3 plaintiff full and equal access.

4 28. The failure to provide accessible facilities created difficulty and
5 discomfort for the Plaintiff.

6 29. Maaco has a sales counter where it handles its transactions with
7 customers.

8 30. Even though the plaintiff did not confront the barrier, the defendants
9 fail to provide an accessible sales counter.

10 31. The defendants have failed to maintain in working and useable
11 conditions those features required to provide ready access to persons with
12 disabilities.

13 32. The barriers identified above are easily removed without much
14 difficulty or expense. They are the types of barriers identified by the
15 Department of Justice as presumably readily achievable to remove and, in fact,
16 these barriers are readily achievable to remove. Moreover, there are numerous
17 alternative accommodations that could be made to provide a greater level of
18 access if complete removal were not achievable.

19 33. Plaintiff will return to Maaco to avail himself of its services and to
20 determine compliance with the disability access laws once it is represented to
21 him that Maaco and its facilities are accessible. Plaintiff is currently deterred
22 from doing so because of his knowledge of the existing barriers and his
23 uncertainty about the existence of yet other barriers on the site. If the barriers
24 are not removed, the plaintiff will face unlawful and discriminatory barriers
25 again.

26 34. Given the obvious and blatant nature of the barriers and violations
27 alleged herein, the plaintiff alleges, on information and belief, that there are
28 other violations and barriers on the site that relate to his disability. Plaintiff will

1 amend the complaint, to provide proper notice regarding the scope of this
 2 lawsuit, once he conducts a site inspection. However, please be on notice that
 3 the plaintiff seeks to have all barriers related to his disability remedied. See
 4 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
 5 encounters one barrier at a site, he can sue to have all barriers that relate to his
 6 disability removed regardless of whether he personally encountered them).

7
 8 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
 9 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
 10 Defendants.) (42 U.S.C. section 12101, et seq.)

11 35. Plaintiff re-pleads and incorporates by reference, as if fully set forth
 12 again herein, the allegations contained in all prior paragraphs of this
 13 complaint.

14 36. Under the ADA, it is an act of discrimination to fail to ensure that the
 15 privileges, advantages, accommodations, facilities, goods and services of any
 16 place of public accommodation is offered on a full and equal basis by anyone
 17 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
 18 § 12182(a). Discrimination is defined, inter alia, as follows:

- 19 a. A failure to make reasonable modifications in policies, practices,
 20 or procedures, when such modifications are necessary to afford
 21 goods, services, facilities, privileges, advantages, or
 22 accommodations to individuals with disabilities, unless the
 23 accommodation would work a fundamental alteration of those
 24 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 25 b. A failure to remove architectural barriers where such removal is
 26 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
 27 defined by reference to the ADA Standards.
- 28 c. A failure to make alterations in such a manner that, to the

1 maximum extent feasible, the altered portions of the facility are
2 readily accessible to and usable by individuals with disabilities,
3 including individuals who use wheelchairs or to ensure that, to the
4 maximum extent feasible, the path of travel to the altered area and
5 the bathrooms, telephones, and drinking fountains serving the
6 altered area, are readily accessible to and usable by individuals
7 with disabilities. 42 U.S.C. § 12183(a)(2).

8 37. When a business provides parking for its customers, it must provide
9 accessible parking.

10 38. Here, the failure to provide accessible parking is a violation of the law.

11 39. When a business provides an entrance, it must provide an accessible
12 entrance.

13 40. Here, no such accessible entrance has been provided.

14 41. When a business provides facilities such as a sales or transaction
15 counter, it must provide an accessible sales or transaction counter.

16 42. Here, no such accessible sales counter has been provided.

17 43. The Safe Harbor provisions of the 2010 Standards are not applicable
18 here because the conditions challenged in this lawsuit do not comply with the
19 1991 Standards.

20 44. A public accommodation must maintain in operable working condition
21 those features of its facilities and equipment that are required to be readily
22 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

23 45. Here, the failure to ensure that the accessible facilities were available
24 and ready to be used by the plaintiff is a violation of the law.

II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL RIGHTS ACT (On behalf of Plaintiff and against all Defendants.) (Cal. Civ. Code § 51-53.)

46. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in all prior paragraphs of this complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia, that persons with disabilities are entitled to full and equal accommodations, advantages, facilities, privileges, or services in all business establishment of every kind whatsoever within the jurisdiction of the State of California. Cal. Civ. Code § 51(b).

47. The Unruh Act provides that a violation of the ADA is a violation of the Unruh Act. Cal. Civ. Code, § 51(f).

48. Defendants’ acts and omissions, as herein alleged, have violated the Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff’s rights to full and equal use of the accommodations, advantages, facilities, privileges, or services offered.

49. Because the violation of the Unruh Civil Rights Act resulted in difficulty, discomfort or embarrassment for the plaintiff, the defendants are also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-(c).)

50. Although the plaintiff was markedly frustrated by facing discriminatory barriers, even manifesting itself with minor and fleeting physical symptoms, the plaintiff does not value this very modest physical personal injury greater than the amount of the statutory damages.

1 **PRAYER:**

2 Wherefore, Plaintiff prays that this Court award damages and provide
3 relief as follows:

4 1. For injunctive relief, compelling Defendants to comply with the
5 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
6 plaintiff is not invoking section 55 of the California Civil Code and is not
7 seeking injunctive relief under the Disabled Persons Act at all.

8 2. Damages under the Unruh Civil Rights Act, which provides for actual
9 damages and a statutory minimum of \$4,000 for each offense.

10 3. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
11 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

12
13 Dated: June 15, 2019

CENTER FOR DISABILITY ACCESS

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15 By: 

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17 _____
Amanda Seabock, Esq.
Attorney for plaintiff